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Regulation of Sports Agents and College Football: Perception or Reality?

Noam Silverman

I. INTRODUCTION

Under the current system in which football players transition from amateur athletes to professionals in the National Football League (“NFL”), the only available means for a player to showcase his talent is through participation in collegiate athletics.¹ Additionally, even if an extremely talented high school player wanted to try his luck in the NFL without college experience, he would be forced to wait three years after graduation before being eligible to play in the NFL.² While the NFL does not require any player to participate in collegiate athletics in order to play in the NFL, the three year waiting period, coupled with the fact that initial entry in the league is through the “College Draft,” indicates that the only real means for a player to have access to playing in the NFL is by first showcasing his skills in college.³

With collegiate football being the only means for a player aspiring to play in the NFL to showcase his skills, a player’s eligibility to participate in college football is of the utmost importance. The National Collegiate Athletic Association (“NCAA”) governs college football, as well as all collegiate athletics.⁴ The NCAA regulates athletic competitions amongst 1070 schools that span three divisions of college athletics.⁵ One of the primary purposes of the NCAA is “to

¹ Under the NFL collective bargaining agreement, signed in 2011, there is no form of sanctioned minor league professional football where players showcase themselves for the major professional clubs. See NFL COLLECTIVE BARGAINING AGREEMENT (Aug. 4, 2011) [hereinafter NFL CBA], available at <http://nflabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf>.

² See *id.* at 17 (requiring an individual to wait three years after the year they graduate or should have graduated high school in order to be eligible to play in the NFL).

³ See *id.* at 17.

⁴ 2010-2011 NCAA DIVISION I MANUAL 1 [hereinafter NCAA MANUAL] (2010), available at <http://www.ncaapublications.com/productdownloads/D111.pdf>.

⁵ Division I consists of schools who offer fourteen sports and includes 335 schools. Division II has 288 schools that must offer at least ten sports. Division III schools make up the re-

encourage its members to adopt eligibility rules to comply with satisfactory standards of scholarship, sportsmanship and amateurism.”⁶ As such, it is a requirement that all student-athletes participating in the NCAA must maintain amateur status.⁷ The primary requirement for an athlete maintaining his or her amateur status under the requirements of the NCAA is refraining from accepting any type of monetary compensation for competing in collegiate athletics.⁸

While the majority of the NCAA sports and NCAA athletes have no issue with adhering to the amateurism requirement, the 2010 NCAA football season has been marred with numerous accounts of players receiving money for playing college football.⁹ The vast majority of these stories have come from sports agents enticing college athletes to use their representation for negotiations with professional teams in exchange for money or other benefits while the players are in college.¹⁰ Agents paying college athletes is not just a violation of NCAA rules, but also a violation of federal law,¹¹ a majority of state laws,¹² and a violation of the National Football League Players Association (“NFLPA”) Regulations Governing Contract Advisors

mainder and are eligible for the NCAA with only one sport. *Differences Among the Three Divisions*, NCAA.ORG,

<http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/who+we+are/differences+among+the+divisions/division+I> (last visited Mar. 7, 2010).

⁶ NCAA MANUAL, *supra* note 4, at 1.

⁷ *Id.* at 65.

⁸ *See id.* at 61-76.

⁹ Former football sports agent Josh Luchs revealed to Sports Illustrated in October of 2010 that he personally paid more than thirty college football players and that this type of activity was the norm amongst agents looking to achieve success in representing college athletes as they become professionals. George Dohrmann, *Confessions of an Agent*, SPORTS ILLUSTRATED (Oct. 18, 2010), *available at* <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1175725/index.htm> (former agent Josh Luchs was the primary source for the article).

¹⁰ *See Agent Scandal Costs UNC Three Players*, ESPN.COM (Oct. 11, 2010), <http://sports.espn.go.com/ncf/news/story?id=5673405>; Ivan Maisel & Mark Schlabach, *Dareus May Have Attended Agent's Party*, ESPN.COM (July 22, 2010), <http://sports.espn.go.com/ncf/news/story?id=5396236>; *NCAA Seeks Insight on Rogue Agents*, ESPN.COM (Oct. 27, 2010), <http://sports.espn.go.com/ncf/news/story?id=5735310>; Alan Scher Zagier, *Agent Oversight Continues to Vex College Sports* (Sept. 2, 2010), <http://www.gazettextra.com/news/2010/sep/02/agent-oversight-continues-vex-college-sports/>.

¹¹ Sports Agent Responsibility and Trust Act (SPARTA), 15 U.S.C. §§ 7801-07 (2006).

¹² Uniform Athlete Agents Act (UAAA) drafted by the National Conference of Commissioners on Uniform State Laws and Approved and Recommended for Enactment in all the States. *FAQ on Uniform Athlete Agents Act*, NCAA.ORG (July 29, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/July+latest+news/FAQ+on+Uniform+Athlete+Agents+Act>. As of July 2010, the UAAA has been adopted by forty states and the District of Columbia. *Id.* Additionally, California, Michigan, and Ohio have adopted non-UAAA legislation for regulating agents. *Id.*

("RGCA").¹³ Given the fact that agents can be regulated through federal and state law, as well as through the NFLPA, one would think that players receiving payments from agents would not be any issue for the NCAA. However, given what has been reported in 2010 alone, it is clear that agents are still paying players in order to obtain the players' commitment to allow the agent to represent the player.

This Comment will discuss the various regulations that are currently in place to curb the issue of athlete agents paying college football players and offer some suggestions for how to improve the current system in order for the NCAA to maintain its goal of promoting amateur athletics. Section II will focus on the background of the NCAA, including the importance of maintaining true amateur collegiate athletics. Additionally, this section will cover the background of the Sports Agent Responsibility and Trust Act ("SPARTA"),¹⁴ the Uniform Athlete Agents Act ("UAAA"),¹⁵ and the NFLPA RGCA.¹⁶ This section will also cover the public policy, which ultimately led to the enactment of federal and state laws governing athlete agents.

Section III will provide analysis for why, even with all the regulation in place, there are still major issues with maintaining true amateur athletics for the NCAA. This section will deal with the limited power the NCAA has in preventing unethical agents from tampering with collegiate athletes. Additionally, the reasons why the NCAA must maintain a positive public image if it hopes to remain a true amateur league will be explained. The pros and cons of the state and federal legislation will also be discussed. Lastly, this section will explain why the NFLPA has the greatest power to regulate agents but also the least incentive to enforce its power.

Finally, Section IV will provide several potential means by which those with the power to curb the issue could act to prevent players and agents from tampering with the true amateur nature of the NCAA. This will include the media's role in shaping public perception of the NCAA, as well as the perception of the issues, the potential impact a minor league football league could have, and how the NFLPA choosing to hire its own in-house agents could solve the issues with agents paying collegiate athletes.

¹³ Any certified NFLPA agent is prohibited from offering anything of value to a potential client or his family to encourage that person to use the agent's services. NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS 8 (2007) [hereinafter NFLPA RGCA], *available at* http://images.nflplayers.com/mediaResources/files/PDFs/SCAA/NFLPA_Regulations_Contract_Advisors.pdf.

¹⁴ 15 U.S.C. §§ 7801-07 (2006).

¹⁵ Uniform Athlete Agents Act (2000) [hereinafter UAAA], *available at* <http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm>.

¹⁶ NFLPA RGCA *supra* note 13.

II. BACKGROUND

The NCAA, federal government, state government, and NFLPA all have an interest in ensuring collegiate athletes are not receiving improper benefits from agents. One of the NCAA's primary goals is to promote intercollegiate amateur athletics.¹⁷ The federal government and most state legislatures have enacted laws in order to deter agents from soliciting collegiate athletes with improper benefits.¹⁸ Lastly, because a violation of federal or state law would call into question the integrity of a sanctioned agent, the NFLPA also has an interest in ensuring collegiate athletes are not receiving benefits from agents.¹⁹ The following sub-sections explain the background of the NCAA, federal and state legislation, and the NFLPA in order to show what each entity has done to ensure that collegiate athletes maintain amateur status.

A. NCAA

Originally named the Intercollegiate Athletic Association of the United States ("IAAUS"), what has become today's NCAA was founded in 1906²⁰ as a means to regulate college football, which had become an extremely dangerous sport.²¹ While the NCAA has expanded to cover all collegiate athletics, its purpose of protecting players and improving intercollegiate athletics remains the same.²² Aside from regulating the athletic competition itself, the NCAA also serves as the regulatory body for school institutional control over athletic programs, ethical conduct, athletic personnel, amateurism, recruiting, eligibility requirements, and financial aid.²³

With the growing popularity of college football, the enforcement of NCAA rules has become more difficult than when its only purpose

¹⁷ NCAA MANUAL, *supra* note 4, at 1.

¹⁸ See Sports Agent Responsibility and Trust Act (SPARTA), 15 U.S.C. §§ 7801-07 (2006); Latest News, *supra* note 12.

¹⁹ See NFLPA RGCA, *supra* note 13, at 8-11.

²⁰ The name was changed to the NCAA in 1910. History, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/who+we+are/about+the+ncaa+history> (last updated Nov. 8, 2010).

²¹ The lack of standardized rules and regulations in college football led to numerous injuries and even deaths which prompted several schools to eliminate their football programs and created the need for a regulatory body. *Id.*

²² See NCAA MANUAL, *supra* note 4, at 1.

²³ See generally NCAA MANUAL, *supra* note 4. The current Division I manual contains 431 pages of rules and regulations intended to maintain the integrity of the NCAA as an organization whose primary goal is the maintenance of an amateur collegiate sports program. *Id.*

was maintaining player safety.²⁴ The popularity of NCAA sports has led to large television deals and has made the NCAA an extremely large organization.²⁵ Given the high revenue reported, there are many who feel college athletes should be paid, including many athletes themselves.²⁶ With players feeling entitled to payment, it leaves the door open for unethical agents to take advantage of the situation and offer to pay the players while they are in college in exchange for the agents having the opportunity to later profit from the players by representing them in contract negotiations.²⁷

As part of its effort to maintain the integrity of college sports, the NCAA rules state that any athlete that uses or receives any benefit from an agent is no longer eligible to compete in NCAA sanctioned events.²⁸ Additionally, any school that knowingly allows an illegible student to compete, or is an unknowing multiple offender, has committed a major violation under NCAA rules.²⁹ The presumptive penalties imposed on an institution guilty of a major violation are extremely severe and include a two-year probationary period, a reduction in recruiting visits for one year, a requirement that coaches are not allowed to engage in off-campus recruiting for one year, a reduction in financial aid awards, post-season sanctions, and a requirement that the institution recertify that it is in compliance with all NCAA rules.³⁰

While the NCAA, as shown through the harsh penalties, takes the integrity of its competition extremely seriously, NCAA rules only address the issue of collegiate athletes who accept improper benefits

²⁴ A 2009 Harris poll showed college football as the third most popular sport, and most popular college sport, trailing only professional football and baseball respectively. *Football Expands Lead Over Baseball as America's Favorite Sport*, HARRISINTERACTIVE.COM (Feb. 1, 2010), <http://www.harrisinteractive.com/vault/Harris-Interactive-Poll-Research-Sports-Popularity-2010-02.pdf>.

²⁵ The NCAA generated roughly \$722 million in total revenue from the 2009-2010 athletic seasons. *See Where Does the Money Go?*, NCAA.ORG, http://ncaa.org/wps/wcm/connect/public/ncaa/answers/nine+points+to+consider_one (last visited Mar. 7, 2011). The NCAA distributes sixty percent of its revenue back to its member institutions. *Id.*

²⁶ *See* Kelly Whiteside, *College Athletes Want Cut of Action*, USATODAY.COM (Aug. 31, 2009), http://www.usatoday.com/sports/2004-08-31-top-ten-number-7_x.htm.

²⁷ *See* Dohrmann, *supra* note 9. The compensation for an agent can be quite lucrative as it can reach three percent of the total value of the players' salaries. NFLPA RGCA, *supra* note 13, at 12. Put in perspective, the agent who advised Donovan McNabb's contract extension worth \$70 million would receive \$210,000 on this one contract alone. *See* Adam Scheffer, *'11 Bonus Key in Donovan McNabb Deal*, ESPN.COM (Nov. 18, 2010), <http://sports.espn.go.com/nfl/news/story?id=5812371>.

²⁸ NCAA Manual, *supra* note 4, at 73.

²⁹ *Id.* at 319-20.

³⁰ *Id.* at 322-23.

and not the agent who has provided the benefits.³¹ The NCAA has no regulatory power over the agents since the NCAA can only penalize its members, and agents are not members of the NCAA.³² Additionally, there is nothing in the NCAA rules that prohibits an athlete from speaking with or receiving advice from agents.³³

The NCAA requirements are that the amateur athletes refrain from entering into contracts with agents or receiving any benefits from agents.³⁴ A collegiate athlete becomes ineligible under NCAA rules by entering into any contract, either oral or written, with an agent.³⁵ An athlete also loses his eligibility for agreeing to allow an agent to represent him once his college career has ended.³⁶ Lastly, a collegiate athlete cannot receive benefits of any kind from an agent, regardless of whether the agent has any intent of representing the athlete.³⁷ The term “benefits” has been interpreted broadly by the NCAA. It has included things as minor as taking a ride to class on a golf cart,³⁸ as well as the more obvious financial gifts.³⁹

The players have little to fear from the NCAA because by the time they get caught, if they are caught at all, they will have likely already left college and moved on to the NFL or another career.⁴⁰ NCAA investigations of rules violations are often not completed until years after the violation occurred. Arizona State University was not penalized until five years after their infractions began,⁴¹ the NCAA took two years before they announced a penalty for rule violations at

³¹ See *id.* at 73-74.

³² See *id.* at 7-8.

³³ *Id.* at 73.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ University of Southern California freshman running back Dillon Baxter was ruled ineligible for NCAA competition after he accepted a ride on a golf cart on USC's campus from an NFLPA agent. Pedro Moura, *USC Wants Dillon Baxter Reinstated*, ESPNLOSANGELES.COM, <http://sports.espn.go.com/los-angeles/ncf/news/story?id=5827657> (last updated Nov. 22, 2010). The ride was considered an extra benefit. *Id.*

³⁹ University of North Carolina football players Marvin Austin, Robert Quinn, and Greg Little lost their NCAA eligibility for accepting jewelry and airfare from an agent. *Agent Scandal Costs UNC Three Players*, ESPN.COM, <http://sports.espn.go.com/ncf/news/story?id=5673405> (last updated Oct. 11, 2010).

⁴⁰ The Dillon Baxter and UNC scandals may represent a trend that the NCAA will have quicker investigations, and players may be more likely to suffer some penalty for accepting improper benefits.

⁴¹ *Division I Committee on Infraction Issues Decision on Arizona State University*, NCAA.ORG (Dec. 15, 2010), <http://fs.ncaa.org/Docs/PressArchive/2010/20101215+asu+coi+rls.htm>.

the University of Michigan,⁴² and six years after initially violating NCAA rules, the University of Southern California was finally disciplined for its rules violations.⁴³ This means that by the time the NCAA comes out with a ruling, the player is most likely well beyond his college career. This leaves the colleges to face the brunt of the punishment as the NCAA charges each member institution with the responsibility of ensuring that it is in compliance with NCAA rules.⁴⁴

B. SPARTA

The Sports Agent Responsibility and Trust Act (SPARTA) is the federal government's response to the issue of unethical agents paying college athletes.⁴⁵ SPARTA begins by broadly defining who classifies as an "athlete agent" and "student-athlete," as well as providing broad definitions for the types of contracts covered including agency, endorsement, and professional sports contracts.⁴⁶ SPARTA makes it illegal for any athlete agent to solicit or recruit a student-athlete into entering an agency contract by using misleading or false representations, or by providing the student-athlete with anything of value.⁴⁷ Additionally, the act requires that any time an agent enters into an agency contract with a student, the agent provides the student with a disclosure document.⁴⁸ The Federal Trade Commission ("FTC") enforces SPARTA, and any violation of SPARTA is considered an unfair or deceptive practice under section 18(a)(1)(B) of the Federal Trade Commission Act.⁴⁹

In addition to the FTC having the authority to enforce SPARTA, the attorney general of any state that has reason to believe that the act is being violated can bring a civil action on behalf of the residents of the state to enjoin the agent, enforce compliance with SPARTA, or

⁴² *Division I Committee on Infractions Issues Decision on University of Michigan*, NCAA.ORG (Nov. 4, 2010), <http://fs.ncaa.org/Docs/PressArchive/2010/20101104+d1+coi+univ+of+mich.htm>.

⁴³ *Division I Committee on Infractions Issues Decision on University of Southern California*, NCAA.ORG (June 10, 2010), <http://fs.ncaa.org/Docs/PressArchive/2010/20100610+d1+coi+usc.htm>.

⁴⁴ See NCAA Manual, *supra* note 4, at 3.

⁴⁵ 15 U.S.C. §§ 7801-07 (2006).

⁴⁶ *Id.* at § 7801. SPARTA essentially considers an agent any person who recruits or solicits a student-athlete to enter into a professional sports or endorsement contract other than the athlete's family.

⁴⁷ *Id.* at § 7802(a)(1)(A)-(B).

⁴⁸ *Id.* at § 7802(b). The disclosure statement must state that the athlete knows that he or she is forfeiting future eligibility by signing the contract and that either the student or the agent must notify the school that the student has signed and is no longer eligible. *Id.* § 7802(b)(3).

⁴⁹ *Id.* at § 7803.

obtain restitution for any damages caused to the state.⁵⁰ The states also have the authority to conduct their own investigations for violations of SPARTA and compel witnesses to appear or produce documentary evidence.⁵¹ The FTC, however, maintains the right to intervene in any action brought by an attorney general.⁵²

SPARTA also gives any college affected by a violation of the act a civil right of action.⁵³ If a college receives any form of discipline from the NCAA, or gives itself any self-imposed sanctions to comply with NCAA rules, the college has the right to recover any expenses incurred or ascertainable damages as a result of the discipline received due to the action of the agent.⁵⁴ A lack of determinative case law or clarification in the statute leaves a grey area for what exactly these damages might be. For example, one potential punishment a college may receive is a loss of scholarships.⁵⁵ However, the damages suffered from this punishment would only affect athletic performance in making a determination of any financial damages difficult. Even the financial loss a school may suffer from a penalty of not being able to participate in postseason events⁵⁶ are speculative because no team is guaranteed to qualify for postseason play. Absent any additional legislation or guidance from courts, it is still unclear as to what potential damages a school can recover.⁵⁷

Lastly, Congress, in its SPARTA legislation, encouraged the states to adopt their own sport agent regulations.⁵⁸ Congress felt that each state should have its own scheme for regulating agents in order to protect the student-athletes and to protect the integrity of amateur athletics.⁵⁹ Particularly, Congress felt that the states should require agents to register with the state and provide protections to the student-athletes in the process of signing with an agent.⁶⁰ As part of their

⁵⁰ *Id.* at § 7804(a)(1).

⁵¹ *Id.* at § 7804(c).

⁵² *Id.* at § 7804(b)(1).

⁵³ *Id.* at § 7805(b)(1).

⁵⁴ *Id.* at § 7805(b)(2).

⁵⁵ *See* NCAA MANUAL, *supra* note 4, at 322-23.

⁵⁶ *See id.*

⁵⁷ SPARTA also gives private citizens a right of action for damages caused by an agent. 15 U.S.C. § 7806. Presumably, the only private individual who could bring a claim would be an athlete that lost eligibility as a result of the agent's deceptive practice. In this instance too, there would be a question as to what damages the athlete could recover since they cannot receive compensation in college. It would be difficult to determine the actual damages suffered from losing eligibility.

⁵⁸ *Id.* at § 7807.

⁵⁹ *Id.*

⁶⁰ *Id.* These protections include the right for the student-athlete to cancel the agency contract and require the agent to make disclosures to the student-athlete.

recommendations to the states, Congress also felt that the states should enact the Uniform Athlete Agents Act.⁶¹

C. UAAA

The National Conference of Commissioners on Uniform State Laws drafted the Uniform Athlete Agents Act (“UAAA”).⁶² At the time the UAAA was released, twenty-eight states had some form of legislation regulating athlete agents with all of them having a great deal of variance from each other.⁶³ The differences in the registration requirements and the lack of reciprocity amongst the states made it extremely difficult for agents to operate in multiple states and remain compliant with the varying laws.⁶⁴ As a result, the NCAA, along with several universities, requested the Conference to draft a uniform set of laws for the states.⁶⁵ With the help of representatives from the NFLPA, as well as representatives from the players associations of the National Hockey League and Major League Baseball,⁶⁶ the Conference drafted the UAAA, which has since been adopted by forty states.⁶⁷

The first major component of the UAAA is its strict registration requirement. Under the UAAA, before any individual may initiate contact with a student-athlete for the purpose of entering into an agency contract, that person must register with the state.⁶⁸ Even if the individual is approached by the student-athlete, rather than selling his services, that individual would have seven days to apply for athlete-agent registration in order to continue the relationship.⁶⁹ Any contract entered into with an agent who is not properly certified is automatically voided under the UAAA.⁷⁰

The registration requirement is the greatest distinction between the UAAA and the federal laws of SPARTA. As part of the registration process, the agent requesting certification must make a number

⁶¹ *Id.*

⁶² UAAA, *supra* note 15.

⁶³ *See id.* at 1.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 1-2.

⁶⁷ *FAQ on Uniform Athlete Agents Act*, *supra* note 12.

⁶⁸ UAAA, *supra* note 15, at 7.

⁶⁹ *Id.*

⁷⁰ *Id.* The comment indicates that the purpose of this section of the UAAA is to make an extremely broad registration requirement in order to satisfy the minimum contacts requirements of *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945). By requiring registration in any state where the agent contacts a student-athlete, the agent would have established minimum contacts in those states.

of disclosures.⁷¹ These disclosures include the name and location of the agent's businesses, the agent's formal training and practical experience, a list of character references, any partners in the agent's venture, whether the agent or any of his associates have ever been convicted of a crime, and whether the agent or any of his associates have ever been sanctioned for any professional misconduct.⁷² After making these disclosures, the attorney general of the state then has the power to determine whether the agent has the "fitness to act as an athlete agent."⁷³ When determining the fitness of the agent, the secretary of state may consider any relevant information disclosed in the application form as well as how recent any harmful conduct occurred and the nature and context of any potentially harmful conduct.⁷⁴ Once an agent is approved, he must renew the application every two years and even when re-approved, the secretary of state maintains the right to suspend or revoke the registration.⁷⁵

The UAAA contains the same warning to the student-athlete as SPARTA, but the UAAA also adds several requirements for the agency contract not required in SPARTA.⁷⁶ The UAAA requires the contract to contain the method for compensation of the agent as well as any other individual that may be compensated as a result of the student-athlete signing the agency contract.⁷⁷ The contract also must specify any costs the student-athlete would need to reimburse the agent for, the description of the services of the agent, and the duration and date of execution.⁷⁸ The failure of the contract to include any of these requirements would make the contract voidable.⁷⁹ These provisions are designed to protect the student-athlete in the process of signing with an agent.⁸⁰ As an additional protection offered by the UAAA, any student-athlete has the right to cancel any agency within

⁷¹ See UAAA, *supra* note 15, at 8-10.

⁷² See *id.*

⁷³ *Id.* at 11.

⁷⁴ See *id.* at 11-12.

⁷⁵ *Id.* at 13-14. Additionally, each state may include registration fees for initial applications, applications based on registration in another state, renewals, and renewals based on registration in another state. *Id.* at 15.

⁷⁶ Compare *id.* at 17, with 15 U.S.C. § 7802(b)(3) (2006).

⁷⁷ UAAA, *supra* note 15, at 16.

⁷⁸ *Id.* at 16-17.

⁷⁹ *Id.*

⁸⁰ See *id.* at 17. For simplicity in drafting, the reference to student-athletes applies to both current and former student-athletes. See *id.*

fourteen days of signing the contract.⁸¹ A student-athlete cannot waive this right.⁸²

Following the registration and contractual formalities, the UAAA deals with the prohibited conduct for athlete agents.⁸³ The prohibited conduct is similar to that of SPARTA.⁸⁴ The prohibited conduct forbids an agent from giving any false or misleading information to the student-athlete for the purpose of obtaining an agency contract, giving the athlete anything of value prior to entering into an agency contract, intentionally contacting a student-athlete without registering with the state, and falsifying any disclosures in the registration form.⁸⁵ Any violation of the prohibitions of the act leaves the agent subject to criminal sanctions by the state in which the violation occurred as well as a fine of up to \$25,000.⁸⁶

Additionally, any violation of the act leaves the agent subject to civil suits.⁸⁷ The UAAA gives colleges and universities a right of action against both the agent and the student-athlete for any damages caused as a result of a violation of the act.⁸⁸ While the schools have the right to sue both the agent and the student-athlete, the liability of either under the act is several and not joint.⁸⁹ The educational institutions have the right to recover damages incurred as a result of any penalty or suspension from competition by the NCAA or any other conference affiliation or damages from any self-imposed penalty in order to mitigate any potential sanctions.⁹⁰

⁸¹ *Id.* at 19.

⁸² *Id.* The comment indicates that this section of the UAAA addresses the disparity in sophistication between the student-athlete and the agent, and that the athlete may still cancel the contract even if the agent has completely complied with all of the requirements under the UAAA.

⁸³ *See id.* at 20.

⁸⁴ *Compare id.* at 20-21, with 15 U.S.C. § 7802 (2006).

⁸⁵ UAAA, *supra* note 15, at 20-21.

⁸⁶ *Id.* at 21-23. The UAAA leaves the determination of the severity of the criminal sanction up to the state.

⁸⁷ *See id.* at 22.

⁸⁸ *Id.* This is a major distinction from the federal law under SPARTA as the UAAA allows the school to sue the student-athlete as well as the agent.

⁸⁹ *Id.* at 22-23. The comment to section 16 realizes that it will be unlikely for a university to sue its former student athlete due to the negative impact it may have on future recruiting. *Id.* However, the option is still available for especially egregious cases. *Id.* Additionally, section 16 does not limit the student-athlete from bringing his own suit against the agent for any damages the agent may be liable for under existing law. *Id.*

⁹⁰ *Id.* at 22. The school's right of action does not accrue until the school discovers or with reasonable diligence would have discovered the violation of the UAAA.

D. National Football League Players Association Regulations for Contract Advisors

While SPARTA and the UAAA have some deterrent and registration requirements that agents must follow in order to avoid criminal or civil penalties, the real power of regulating athlete agents who represent NFL athletes lies in the NFLPA. Under the current NFL collective bargaining agreement, the NFLPA is recognized as the “[s]ole and exclusive bargaining representative of present and future employee players in the NFL”⁹¹ As the exclusive bargaining representative of the players, the National Labor Relations Act gives the NFLPA the exclusive right to represent NFL players in negotiations over wages, working hours, or any other employment matters.⁹² As the exclusive representative of the players, the NFL CBA recognizes that under federal labor law the NFLPA has the sole authority to regulate the agents that represent any players in contract negotiations with NFL teams.⁹³

Under the current NFLPA Regulations Governing Contract Advisors (“RGCA”), no individual may, on behalf of a player, negotiate with or advise an NFL team in regards to the terms of a player’s contract, unless that person is certified by the NFLPA, has a signed representation agreement with the player, and has filed that agreement with the NFLPA.⁹⁴ This includes anyone who gives counsel to a player with respect to negotiating contracts with the individual clubs, enforcing those contracts once signed, and anyone who provides counsel on tax or investment services related to the negotiation of the contract.⁹⁵ These rules are not set for any length of time, as the NFLPA Board of Player Representatives and officers of the NFLPA have the discretion to change these rules at any time.⁹⁶

⁹¹ See NFL CBA, *supra* note 1, at xiv.

⁹² See 29 U.S.C. § 157 (2006).

⁹³ NFL CBA, *supra* note 1, at 210. The NFL may only use agents certified by the NFLPA for contract negotiations with NFL teams. *Id.*

⁹⁴ NFLPA RGCA, *supra* note 13, at 3.

⁹⁵ *Id.* This section relates only to financial issues that deal directly with the contract as there is a separate certification needed to become a financial advisor for an NFL Player. See generally, NFL PLAYERS ASSOCIATION REGULATIONS AND CODE OF CONDUCT GOVERNING REGISTERED PLAYER FINANCIAL ADVISORS (2007), available at [http://images.nflplayers.com/mediaResources/images/oldImages/fck/NFLPAregs\(3\).pdf](http://images.nflplayers.com/mediaResources/images/oldImages/fck/NFLPAregs(3).pdf).

⁹⁶ See NFLPA RGCA, *supra* note 13, at 18. The Board of Player Representatives consists of a representative from each NFL team and the officers consist of a president and ten vice presidents elected from the Board as well as an executive director elected by the Board. See NFL PLAYERS ASSOCIATION CONSTITUTION 9-12 (2007), available at <http://images.nflplayers.com/mediaResources/images/oldImages/fck/NFLPA%20Constitution%20-%20March%202007.pdf>.

In order to become an NFLPA certified contract advisor, an individual must pay a required application fee,⁹⁷ attend the NFLPA seminar for new agents, pass a written test, and file the required application form.⁹⁸ The only other requirement for an agent is an undergraduate degree from an accredited four-year school and a postgraduate degree from an accredited school. However, this requirement can be waived and there are no requirements for what field the degrees must be in.⁹⁹ Applications to the NFLPA will be denied if an applicant made any false statements in the application, had any history of misappropriating funds rendering the applicant unfit to serve as a fiduciary, had been denied by another professional sports association, and if the applicant had solicited a player for representation prior to being certified.¹⁰⁰

Aside from the general requirements of attending training and acting in a trustworthy manner, the only requirement relevant to agent contact with student-athletes is the requirement that all agents comply with applicable state and federal laws.¹⁰¹ Although the prohibited conduct does not specifically mention student-athletes, there are prohibitions which effectively cover agents who have contact with students that would violate NCAA rules.¹⁰² The rules specifically prohibit any agent from offering anything of value to any prospective client or his family in order to encourage the person to become a client regardless of whether the prospective client is a student-athlete or an NFL veteran.¹⁰³ Additionally, agents are not permitted to have any contact with any player who is not eligible for the NFL draft.¹⁰⁴

Clearly an agent who was found to have violated SPARTA or UAAA would be in violation of the NFLPA RGCA, and the NFLPA

⁹⁷ The fee for 2012 was \$2,500. *Agent Regulations*, NFLPA, <http://www.nflplayers.com/about-us/Rules--Regulations/Agent-Regulations/> (last visited Apr. 29, 2012).

⁹⁸ NFLPA RGCA, *supra* note 13, at 3-4.

⁹⁹ *Id.* This requirement seems to be easily waived in light of the NFLPA certifying Teague Egan as a contract advisor while Egan was still an undergraduate at the University of Southern California. See Pedro Moura, *USC: Student/Agent Warned*, ESPNLOSANGELES.COM, <http://sports.espn.go.com/los-angeles/ncf/news/story?id=5836913> (last updated Nov. 22, 2010).

¹⁰⁰ NFLPA RGCA, *supra* note 13, at 4.

¹⁰¹ *Id.* at 6-8. With the enactment of SPARTA, and with a majority of states enacting the UAAA, section 3 becomes applicable to agents who tamper with a student-athletes eligibility.

¹⁰² See *id.* at 8, 11.

¹⁰³ *Id.* at 8.

¹⁰⁴ *Id.* at 11. This section also does not mention student-athletes or any NCAA regulations. See *id.* However, under the NFL CBA, a player is not eligible for the NFL draft until three NFL regular seasons have been completed after the player has finished high school so this section would apply to students up until their junior year at a university. See NFL CBA, *supra* note 1, at 17.

could then suspend or permanently revoke the agent's certification.¹⁰⁵ However, absent a criminal conviction or civil suit, the only manner in which the NFLPA adjudicates violations of the RGCA is through arbitration of disputes brought by either players or other agents.¹⁰⁶ Additionally, the president of the NFLPA appoints a committee of three to five active or retired NFL players to serve on the Committee on Agent Regulation and Discipline ("CARD").¹⁰⁷ CARD, with the assistance of the general counsel of the NFLPA, serves to prosecute agents who violate the RGCA.¹⁰⁸ CARD may file complaints against an agent for violations of the RGCA to which the agent has the right to answer. However, CARD retains the ultimate power to determine whether the agent's answer sufficiently rebuts the allegations and whether or not discipline will be imposed on the agent.¹⁰⁹ But CARD is not the final authority on the agent's discipline as the agent may appeal to outside arbitrator. It should be noted that the arbitrator is selected by the NFLPA.¹¹⁰

III. ANALYSIS

With NCAA rules in place to maintain amateur collegiate athletics, SPARTA and the UAAA to protect the NCAA's mission, and the NFLPA RGCA which, without actually mentioning that it pertains to college athletes, prohibits the type of activity that the NCAA is looking to combat, one would think that there should be no room for unscrupulous agents to operate. Why then do some see it as the norm in college athletics for an agent to pay college athletes in order to obtain a commitment from the students to allow the agent to represent them?¹¹¹ It starts with various agencies' ability or zealousness in enforcing the standards. If the agencies lack the ability, or fail to

¹⁰⁵ A violation of either the federal or state law would fall under the prohibited conduct of the RGCA. See NFLPA RGCA, *supra* note 13, at 8-11. The NFLPA has the authority to suspend for a period of time or permanently revoke an agent's license for performing any of the prohibited conduct in the RGCA. *Id.* at 17.

¹⁰⁶ See *id.* at 13.

¹⁰⁷ *Id.* at 15.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 16-17.

¹¹⁰ See *id.* at 17-18. The disciplinary process seems to put a seemingly insurmountable burden on the agent to prove his innocence once CARD chooses to file a complaint. For a discussion on the relative fairness of agent regulation by professional sports unions, see Richard T. Karcher, *Fundamental Fairness in Union Regulation of Sports Agents*, 40 CONN. L. REV. 355 (2007).

¹¹¹ See Dohrmann *supra* note 9. In Luchs' recollection of life as an agent, he describes college player's receiving payments from agents as the norm. *Id.* According to Luchs, only a few players ever rejected his offers to give the player some form of compensation. *Id.*

zealously enforce their own standards, then clearly there is little that can be done to prevent unethical agent activity.

A. NCAA

The NCAA has been extremely vocal and active in its attempt to maintain its image as a true amateur athletic organization.¹¹² However, the NCAA is powerless when it comes to sanctioning agents. Further, by the time any wrongdoing is discovered, often times a player who has intentionally violated NCAA regulations has long since graduated or is close to entering the NFL,¹¹³ leaving only the school, which may have been entirely innocent in the matter, to suffer the consequences for violating NCAA rules.¹¹⁴ The NCAA realizes that it has limited power in this area and that in order for anything to change there needs to be more involvement from the NFL and the NFLPA.¹¹⁵

Given the NCAA's lack of power to directly regulate agents, a positive public perception of the NCAA as a legitimate organization is essential in order to obtain the help of legislators and the help of the NFLPA to protect the NCAA's standards. This was highlighted when investigators from North Carolina's Secretary of State began an investigation of NFLPA certified agent Gary Wichard.¹¹⁶ North Carolina's investigation began as a result of a NCAA investigation involving Wichard and the University of North Carolina (UNC).¹¹⁷ Wichard made multiple transactions with former UNC assistant football coach

¹¹² See *Q & A with NCAA Director of Agent, Gambling and Amateurism Activities Rachel Newman Baker*, NCAA.ORG (July 29, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/July+latest+news/Interview+with+NCAA+Director+of+Agent,+Gambling+and+Amateurism+Activities>.

¹¹³ The highly publicized scandal involving University of Southern California football star Reggie Bush required a four-year investigation. Madison Gray, *USC Trojans Get Black Eye Over Reggie Bush Scandal*, NEWSFEED.TIME.COM (June 10, 2010), <http://newsfeed.time.com/2010/06/10/usc-trojans-get-black-eye-over-reggie-bush-scandal>. University of North Carolina football player Robert Quinn was ruled ineligible for the 2010-2011 football season for dealing with an agent. *UNC Kicks Austin Off Team; 2 Others Declared Ineligible*, SI.COM (Oct. 11, 2010), http://sportsillustrated.cnn.com/2010/football/ncaa/10/11/unc.kicks.austin.off.team.ap/index.html?xid=si_topstories. However, it did not have a major impact on his ability to be drafted by an NFL team since some projected him as the seventh best player in the 2011 NFL Draft. See Mel Kiper, *Big Board Has a New No. 1*, ESPN.COM, <http://insider.espn.go.com/nfl/draft2011/insider/news/story?id=6174328> (last updated Mar. 2, 2011).

¹¹⁴ Even if a school had no knowledge they were allowing an ineligible player to participate, they are still in violation of NCAA rules. See NCAA MANUAL, *supra* note 4, at 43.

¹¹⁵ See *Q & A with NCAA Director of Agent, Gambling and Amateurism Activities Rachel Newman Baker*, *supra* note 112.

¹¹⁶ See *Attorney: NC Investigators Interview Gary Wichard*, USATODAY.COM, http://www.usatoday.com/sports/college/football/acc/2010-10-05-wichard-blake-nfl-relationship_N.htm?csp=34sports (last updated Oct. 5, 2010).

¹¹⁷ *Id.*

John Blake.¹¹⁸ North Carolina's investigation of the two deals primarily with several benefits received by Marvin Austin, a UNC football player, while he was a student-athlete at UNC.¹¹⁹ Austin made several trips to Miami and California, including two trips to a football training facility two miles from Wichard's agency.¹²⁰ Austin's name was listed on hotel receipts directly above Wichard's agency name.¹²¹ The investigation believes that Wichard either funded the trips directly, or used Blake as a "runner" (person who acts on behalf of an agent) to pay for Austin's trips.¹²² There are also reports that Blake recommended Wichard to former University of Alabama football player Marcell Dareus and former University of South Carolina football player Wesley Saunders.¹²³ Austin, Dareus, and Saunders were all sanctioned by either the NCAA or their respective universities for improper agent benefits.¹²⁴ As of March 2, 2011, the investigation of Wichard was still ongoing.¹²⁵ However, in December of 2010, the NFLPA suspended Wichard for nine months "for having impermissible communication" with a player in violation of the NFL CBA.¹²⁶

While the NCAA has shown that it is committed to maintaining its status as an organization that governs amateur collegiate athletics, the public's perception of the NCAA does not always match the NCAA's stated goals and objectives.¹²⁷ The recent Cam Newton and

¹¹⁸ Charles Robinson, *Money Trail Ties Agent, Ex-UNC Coach*, RIVALS.COM (Sept. 29, 2010), <http://rivals.yahoo.com/ncaa/football/news?slug=cr-uncagents092910>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *See id.*

¹²³ Charles Robinson & Dan Wetzel, *Sources: Blake Recommended Agent to Dareus*, RIVALS.COM (Oct. 3, 2010), <http://rivals.yahoo.com/ncaa/football/news?slug=ys-dareus100310>.

¹²⁴ *See id.*; *NCAA Requires Repayment, Loss of Contests for Marcell Dareus*, NCAA.ORG (Sept. 2, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/September+latest+news/NCAA+REQUIRES+REPAYMENT,+LOSS+OF+CONTESTS+FOR+MARCELL+DAREUS>; *Agent Scandal Costs UNC Three Players*, ESPN.COM, <http://sports.espn.go.com/ncf/news/story?id=5673405> (last updated Oct. 11, 2010).

¹²⁵ Investigators were given a search warrant for Wichard's financial records in an attempt to prove Wichard had provided improper benefits to student-athletes in violation of North Carolina law. *Agent's Financial Records Sought*, ESPN.COM, <http://sports.espn.go.com/ncf/news/story?id=6174078> (last updated Mar. 3, 2011).

¹²⁶ *Gary Wichard Suspended 9 Months*, ESPN.COM, <http://sports.espn.go.com/nfl/news/story?id=5880708> (last updated Dec. 3, 2010).

¹²⁷ *See Gene Wojciechowski*, *The Cam Newton Affair Still Stinks*, ESPN.COM (Jan. 21, 2011), http://sports.espn.go.com/espn/columns/story?columnist=wojciechowski_gene&page=wojciechowski/110121&sportCat=ncf.

Ohio State University (“OSU”) scandals are two incidents in which the NCAA drew heavy criticism for its disciplinary action.¹²⁸

During the 2010-2011 football season, Cam Newton was accused of soliciting universities for cash payments in exchange for his agreement to play at the university.¹²⁹ The reports indicated that Newton had sought \$180,000 from Mississippi State University (“MSU”) in exchange for an agreement to play football at the school.¹³⁰ In December of 2009, Newton committed to play football at Auburn University (AU), a decision some believed was made by Newton’s father Cecil.¹³¹ There were never any allegations that AU paid Newton or his father for the commitment.¹³² The NCAA’s investigation revealed that Cecil Newton did in fact solicit MSU, but Cam never knew, or had anything to do, with the solicitation.¹³³ Since Cam did not have any knowledge of his father’s actions, the NCAA ruled he was still eligible to compete.¹³⁴

The OSU scandal involved several football players who accepted improper benefits from a tattoo parlor and also sold some awards and championship rings they received from various team achievements.¹³⁵ The players all claimed that they did not know they were violating NCAA rules.¹³⁶ In December of 2010, the NCAA ruled that five of the athletes would be suspended for the first five games of the 2011 football season, and a sixth player would miss the first game of the 2011 season.¹³⁷ However, the players were not suspended for the Sugar Bowl game, which was played after the NCAA ruling but before

¹²⁸ See Adam Ritenberg, *NCAA, Sugar Bowl Defend OSU Decision*, ESPN.COM (Dec. 29, 2010), http://espn.go.com/blog/bigten/post/_/id/21560/ncaa-sugar-bowl-defend-osu-decision; Bruce Feldman, *With Buckeyes, NCAA Just Keeps Spinning*, ESPN.COM (Dec. 29, 2010), http://insider.espn.go.com/ncf/blog?name=feldman_bruce&id=5966094; Wojciechowski, *supra* note 127.

¹²⁹ Pat Forde, Chris Low & Mark Schlabach, *Cash Sought for Cam Newton*, ESPN.COM, <http://sports.espn.go.com/ncf/news/story?id=5765214> (last updated Nov. 5, 2010).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *NCAA Addresses Cam Newton’s Eligibility*, NCAA.ORG (Dec. 1, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/December/NCAA+addresses+eligibility+of+Cam+Newton>.

¹³⁴ *Id.*

¹³⁵ *Ohio State Football Players Sanctioned*, ESPN.COM, <http://sports.espn.go.com/ncf/news/story?id=5950873> (last updated Dec. 26, 2010).

¹³⁶ Pat Forde, *NCAA Ruling Defies Common Sense*, ESPN.COM (Dec. 23, 2010), http://sports.espn.go.com/ncf/columns/story?columnist=forde_pat&id=5951832.

¹³⁷ *NCAA Requires Loss of Contests for Six Ohio State Football Student Athletes*, NCAA.ORG (Dec. 23, 2010), <http://www.ncaa.org/wps/wcm/connect/public/ncaa/resources/latest+news/2010+news+stories/december/ncaa+requires+loss+of+contests+for+six+ohio+state+football+student+athletes>.

the 2011 football season.¹³⁸ The NCAA stated that since the players did not know they were violating NCAA rules, the punishments would be delayed until the 2011 season.¹³⁹

Many people viewed the incident involving Cam Newton as indicating a major loophole in NCAA rules.¹⁴⁰ The thought was that a player could bypass NCAA rules by having a third-party negotiate and accept payment from a school.¹⁴¹ This is not the case. The reason Cam Newton was not suspended for violating NCAA rules was because there were no findings that he had any knowledge that his father was negotiating payments with schools in order to have his son play for them.¹⁴² Additionally, there were no findings that Cecil Newton had received any payments from any schools. Had Cecil accepted payments from a school, or anyone else, in order to ensure that Cam would commit to a particular school, Cam would have been ruled ineligible, regardless of whether he knew about the negotiations and payments.¹⁴³ Even so, there was still a great deal of outrage by many over the fact that there were no sanctions laid down upon either Cam Newton or the University of Auburn as a result of what had transpired.

The public perception of the NCAA took another hit with the rulings for the OSU athletes who were suspended.¹⁴⁴ The five OSU players were suspended for selling items they received from bowl games they had played in while members of the OSU football team.¹⁴⁵ While it may seem unusual to punish a student for selling their own property, the rule serves a legitimate purpose. The rule is in place to prevent athletes from selling memorabilia to agents or school boosters for high prices as a way to circumvent the rules for paying athletes. While the fact that the athletes were disciplined for selling their own property was criticized, the main problem people had with the NCAA was the timing of the punishment.¹⁴⁶ All the players were allowed to

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See NCAA Statement on Fairness of Rules Decisions, NCAA.ORG (Dec. 29, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/December/NCAA+statement+on+fairness+of+rules+decisions>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ See Frank Deford, *NCAA Football: All Dollars, No Sense*, SI.COM, http://sportsillustrated.cnn.com/2011/writers/frank_deford/01/06/ncaa.money/index.html (last updated Jan. 7, 2011); NCAA Statement on Fairness of Rules Decisions, *supra* note 140.

¹⁴⁵ *Ohio State Football Players Sanctioned*, *supra* note 135.

¹⁴⁶ See Bruce Feldman, *With Buckeyes, NCAA Just Keeps Spinning*, BRUCE FELDMAN BLOG (Dec. 29, 2010, 11:02 AM), http://insider.espn.go.com/ncf/blog?name=feldman_bruce&id=5966094.

play in the 2011 Sugar Bowl, and the suspensions were delayed until the start of the 2011-2012 season.¹⁴⁷ Five of the players facing suspension were eligible for the NFL draft so they could have easily escaped any discipline at all by playing in the Sugar Bowl and then declaring for the NFL draft.¹⁴⁸

While the NCAA may have the public on its side when it comes to agents who pay athletes, it seems to have lost some public sentiment, rightfully or not, when it comes to how it has handled other issues involving its regulation of amateur athletics. The fact that the NCAA must rely on legislation as well as the NFLPA in order to help enforce its standards for amateur athletics makes it important for the NCAA to maintain a positive public image in order to gain support.

The media's ability to affect policymaking plays an important role in the NCAA's goal of deterring unethical agents from tampering with student-athlete eligibility. As far as policymaking in the United States, "[t]he importance of the mass media in today's society cannot be overestimated."¹⁴⁹ "[M]edia coverage can and does influence the decision to charge, the decision to reach a plea bargain, and the ultimate disposition. Responsible members of the media balance journalistic interests with the public's interest in a fair justice system . . ."¹⁵⁰ Legislation like SPARTA and the UAAA are based on the idea that it is good public policy for the government to sanction agents who violate NCAA rules.¹⁵¹ The reports indicating the NCAA's inability to sanction agents played a role in the state of North Carolina pursuing an investigation of Gary Wichard.¹⁵² While it may be unclear whether the media influences the public or if the public influences the media, the media can affect public opinion which can, in turn, affect how public officials handle high profile issues.¹⁵³ Given the substantial impact the media can have on the NCAA's image, and the effect that

¹⁴⁷ *Id.*

¹⁴⁸ Ohio State Coach Jim Tressel did make all the players commit to return to school before allowing the players to play in the game, and while all the players did commit, they could easily break the promise and enter the draft. See *Jim Tressel: Terrelle Pryor will Return*, ESPN.COM, <http://sports.espn.go.com/ncf/bowls10/sugar/news/story?id=5970169> (last updated Dec. 30, 2010).

¹⁴⁹ Kristine A. Oswald, *Mass Media and the Transformation of American Politics*, 77 MARQ. L. REV. 385, 385 (1994).

¹⁵⁰ Janine Robben, *Oregon Media and Courts: A Guideline*, 69 OR. ST. B. BULL. 33, 34 (2009).

¹⁵¹ See 15 U.S.C. §§ 7801-07 (2006); UAAA, *supra* note 15, at 1-2.

¹⁵² See *Attorney: NC Investigators Interview Gary Wichard*, USATODAY.COM, http://www.usatoday.com/sports/college/football/acc/2010-10-05-wichard-blake-nfl-relationship_N.htm?csp=34sports (last updated Oct. 5, 2010).

¹⁵³ Oswald, *supra* note 149, at 402.

media coverage can have on lawmakers, it is essential for the NCAA to maintain a positive public image when it comes to agents paying student-athletes if the NCAA wants to see a substantial change.

B. SPARTA and the UAAA

SPARTA and the UAAA are both relatively good pieces of legislation when it comes to covering the issues of unscrupulous agents that the NCAA is trying to avoid. However, they are far from perfect. SPARTA does not even consider the fact that the student-athlete might be equally to blame for the fact that he is receiving benefits.¹⁵⁴ Oftentimes, it is the players who seek out agents in search of early compensation.¹⁵⁵ By assuming the athlete is completely innocent in the matter, SPARTA leaves out what may be an equally liable party in any potential damages suffered by a university.

The UAAA is a much more complete piece of legislation as it includes both a registration requirement¹⁵⁶ and allows schools a right of action against a student-athlete who accepted the funds.¹⁵⁷ This is a key difference between the UAAA and SPARTA because it gives the schools a chance to fully recover any damages suffered. While allowing schools the ability to bring a suit against a former student-athlete may seem like an appropriate and necessary standard, it is not likely that schools will start suing their former students. The UAAA acknowledges this as shown by the comment to section 16:

It is assumed that educational institutions will be very reluctant to bring an action against a former student-athlete. Public opinion and the desire to be successful in future recruiting of athletes should cause educational institutions to carefully consider whether to exercise the right . . . in most situations. There are, however, known instances of extremely egregious conduct which caused serious damage to educational institutions. Subsection (a) keeps open the possibility of a civil action against those individuals.¹⁵⁸

The liability of the player is also separate from the liability of the agent under the UAAA, which is also important because it allows the school to recover damages from the agent without worrying that the

¹⁵⁴ See 15 U.S.C. §§ 7801-07 (2006).

¹⁵⁵ See Dohrmann, *supra* note 9. According to Luchs, players would ask for money not only for themselves but for their teammates as well. *Id.* Additionally, players often brought up the idea of payments as opposed to the agents pressuring the student to take the payments. *Id.*

¹⁵⁶ UAAA, *supra* note 15, at 7 (“[A]n individual may not act as an athlete agent in this State without holding a certificate of registration . . .”).

¹⁵⁷ *Id.* at 22 (“An educational institution has a right of action against . . . a former student-athlete for damages caused by a violation of this [Act].”).

¹⁵⁸ *Id.* at 23.

agent may indemnify the student, giving the appearance that a school is suing its former player.¹⁵⁹

The main problem with SPARTA and the UAAA is that they are useless, unless zealously enforced. According to an Associated Press report, less than half of the forty-two states who have either enacted the UAAA or some other form of agent regulating legislation, have yet to revoke a single license, and SPARTA has not been enforced at all.¹⁶⁰ Both SPARTA and the UAAA were designed for promoting true amateur competition in college sports, but without enforcement, they are just empty words.

The lack of enforcement could be tied to the changing public sentiment towards the legitimacy of the NCAA. Aside from issues like the NCAA's handling of the Cam Newton and Ohio State situations, there are those who believe that the NCAA, itself, is hypocritical because of the large television and coaching contracts allowed while not allowing players to be paid. ESPN, alone, has paid over two billion dollars for the rights to cover the Southeastern Conference's games¹⁶¹ and another \$300 million to the University of Texas as a part of the University of Texas television network.¹⁶²

Headlines such as these can lead many people to think that the NCAA institutions are seeing huge profits at the expense of the players who remain amateurs. While the large numbers grab the headlines, the fact that only fourteen out of 120 Football Bowl Subdivision athletic programs showed a positive net revenue between 2004 and 2009 is indicative of the unrealistic perception of the NCAA schools.¹⁶³ While public sentiment appears to be in favor of legal sanctions for agents who tamper with the amateur status of collegiate athletes, the competing notion (however incorrect it may be) that the NCAA is creating a huge profit for the schools likely plays a part in the lack of enforcement of the laws by the state and federal governments.

These negative perceptions of the NCAA, even if not the reality, especially harm the NCAA when it comes to the enforcement of the

¹⁵⁹ See *id.*

¹⁶⁰ See Alan Scher Zagier, *Agent Oversight Continues to Vex College Sports*, ASSOCIATED PRESS (Sept. 2, 2010), http://www.huffingtonpost.com/2010/09/02/agent-oversight-continues_n_703143.html.

¹⁶¹ *ESPN Signs 15-Year Deal with SEC*, ESPN.COM (Aug. 25, 2008), <http://sports.espn.go.com/ncaa/news/story?id=3553033>.

¹⁶² *Texas, ESPN Announce New Network*, ESPN.COM (Jan. 19, 2011), <http://sports.espn.go.com/espn/news/story?id=6037857>.

¹⁶³ *Behind the Blue Disk – FBS Athletic Revenues and Expenses*, NCAA.ORG (Oct. 15, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Behind+the+Blue+Disk/Behind+the+Blue+Disk+-+FBS+Athletic+Revenues+and+Expenses>.

UAAA. The UAAA makes it very clear in its prefatory note that one of the primary reasons for the drafting of the law was because the NCAA requested a uniform law that would help enforce the NCAA's rules.¹⁶⁴ "[T]he NCAA and several universities asked the Conference to undertake the drafting of a Uniform Act. After initial reluctance . . . the Conference agreed to do so."¹⁶⁵ The fact that the drafters of the UAAA specifically state that the reason for drafting it was to satisfy the NCAA's request makes the NCAA's maintenance of not only the actual legitimacy, but the perceived legitimacy of their amateur league of the utmost importance if the states are expected to zealously enforce the UAAA.

While bad publicity towards the NCAA may have an effect on whether the UAAA is enforced, the old saying, "no publicity is bad publicity," may ring true for the NCAA's hope in sanctioning unscrupulous agents. The NCAA's handling of the Cam Newton scandal was not viewed very favorably by the media.¹⁶⁶ However, following the media reports of the scandal, the state of Mississippi and the FBI began investigations on whether agent laws were broken.¹⁶⁷ The investigations focus on Kenny Rogers, a former Mississippi State University ("MSU") football player.¹⁶⁸ The allegations were that Rogers assisted Cecil Newton in soliciting Cam's services to MSU in exchange for \$180,000.¹⁶⁹ Although Rogers is not a certified agent, or acting as an agent in the sense that he would be negotiating a contract with a professional team, he still may be considered an agent under either SPARTA or the UAAA.¹⁷⁰ If the investigations find he did in fact negotiate to have Cam Newton paid, he would likely qualify as an agent under either act because he negotiated for an athlete to be paid for playing.¹⁷¹ Even though the NCAA did not receive a favorable media depiction following the scandal, the fact that it was widely re-

¹⁶⁴ UAAA, *supra* note 15, at 1.

¹⁶⁵ *Id.*

¹⁶⁶ See Wojciechowski, *supra* note 127.

¹⁶⁷ See David Brandt, *Law Enforcement Probes NCAA Issues Under Agent Act*, BOSTON.COM (Dec. 8, 2010), http://www.boston.com/sports/colleges/football/articles/2010/12/08/law_enforcement_probes_ncaa_issues_under_agent_act/; *Attorney: John Bond Talks to FBI*, ESPN.COM, <http://sports.espn.go.com/ncf/news/story?id=5813734> (last updated Nov. 17, 2010). The FBI did not comment on the investigation and the article did not mention a specific crime they were investigating. However, the only logical reason for an FBI investigation in the matter would be to enforce SPARTA.

¹⁶⁸ Brandt, *supra* note 167.

¹⁶⁹ *Id.*

¹⁷⁰ See 15 U.S.C. § 7801(2); UAAA, *supra* note 15, at 3.

¹⁷¹ See UAAA, *supra* note 15, at 3. The lack of cases on either SPARTA or the UAAA leaves the question of whether or not Rogers would be considered an agent uncertain. There is a valid argument that if Cam Newton did not authorize Rogers to negotiate on his behalf, then Rogers would not qualify as an agent under the laws.

ported caused the state and federal governments to investigate the matter. If this is the start of a trend, it bodes well for the NCAA since their standards could be enforced regardless of whether they are perceived as having handled the situation appropriately or not.

Additionally, even if enforced, the financial penalty assessed under the UAAA is a maximum of \$25,000,¹⁷² which may not be enough to deter an agent from the potential rewards of signing a top college athlete. The players selected in the first round of the 2010 NFL Draft signed contracts ranging in value from \$9 million to \$78 million over the life of the contract.¹⁷³ At the standard three percent commission, the agents representing those players took commissions ranging from \$27,000 to \$234,000 for negotiating those contracts.¹⁷⁴ Even at the lowest end of the first round, an agent would still make \$2,000 over the total fine if caught.¹⁷⁵ While the financial deterrent of the legislation may not be sufficient, the fact that a criminal record would make an agent ineligible for certification under the NFLPA RGCA may still allow the UAAA to be an effective piece of legislation if it were enforced regularly. However, this still depends on the UAAA being regularly enforced. Regardless of how high the penalty may be, without enforcement, there will never be a deterrent. Absent zealous enforcement, both SPARTA and the UAAA are meaningless.

C. NFLPA

The NFLPA has the greatest authority and ease of prosecuting rogue agents, but it also has the least amount of incentive and prosecutors to investigate any potential claims against agents.¹⁷⁶ Further, the NFLPA is the official representative of the players.¹⁷⁷ It would therefore be counter-intuitive to its purpose if the NFLPA were to bring to light how many of its players openly accepted unauthorized benefits while playing in college. Publicizing this information would look bad on the part of the players, and the NFLPA would not be looking out for the best interest of its members if it reported their un-

¹⁷² *Id.* at 23.

¹⁷³ *Contract Status of '10 First-Round Draft Picks*, NFL NATION BLOG (July 29, 2010, 11:39 AM), http://espn.go.com/blog/nflnation/post/_id/25223/contract-status-of-10-first-round-draft-picks.

¹⁷⁴ NFL agents can take a maximum of three percent of the value of a player's contract as compensation for their work. NFLPA RGCA, *supra* note 13, at 12.

¹⁷⁵ Given the fact that these laws are rarely enforced, the risk appears to be worth the reward. *See Zagier, supra* note 160.

¹⁷⁶ CARD, the appointed enforcement committee for the NFLPA RGCA, is limited to three to five appointed members. NFLPA RGCA, *supra* note 13, at 15.

¹⁷⁷ NFL CBA, *supra* note 1, at xiv ("[T]he [NFLPA] . . . is recognized as the sole and exclusive bargaining representative of present and future employee players in the NFL . . .").

ethical acts. Moreover, although NFLPA executive director DeMaurice Smith claims that curbing the issue is a priority for the NFLPA,¹⁷⁸ the players in the league likely do not see this as an issue worth taking seriously as they benefit from the payment received in college and suffer little to no consequences as a result of violating NCAA rules.¹⁷⁹ According to an anonymous blog written by an NFL player, players in the league openly joke about having to take a pay cut when they enter the NFL from college and give other teammates a hard time for not getting more money from agents while playing in college.¹⁸⁰ If the players show little interest in the situation, then the NFLPA will not show interest either. The rules in the NFLPA RGCA have no effect unless the players want them to be enforced and as long as the players feel that the agents paying college players is not a bad thing, the NFLPA will not actively pursue the issue.

The best way for the NFLPA to effectively combat the issue of agents they certify paying college players would be for the NFLPA to take an active role in investigating the issues and enforcing their rules. This is extremely unlikely to occur anytime in the near future. The current NFL CBA went into effect on August 4, 2011.¹⁸¹ This agreement was signed after a 130-day lockout by the owners of the NFL franchises.¹⁸² Among the key issues negotiated in the new collective bargaining agreement were player safety, an eighteen-game NFL season, revenue sharing, workers compensation, and players' salaries.¹⁸³ Noticeably missing from the NFLPA's list of issues of concern was how to handle agents who violate the rules and pay collegiate athletes.

It is questionable how much the NFLPA actually cares about the issue, regardless of what they may state publicly. According to former agent Jeff Luchs, up until 1999, the NFLPA allowed agents to recover

¹⁷⁸ *Mike & Mike in the Morning: Show in Review*, ESPN.COM (July 21, 2010), http://espn.go.com/espnradio/show/_/showId/mikeandmike/postId/5398131/show-review (select the link titled, NFLPA executive director DeMaurice Smith).

¹⁷⁹ Reggie Bush's only penalty was the loss of his Heisman trophy and some personal shame from his former university. See Pedro Maura, *USC Takes Down Reggie Bush Jersey*, ESPNLOSANGELES.COM, <http://sports.espn.go.com/los-angeles/ncf/news/story?id=5562582> (last updated Sept. 12, 2010). The three players from North Carolina lost only a portion of their NCAA eligibility, but they are still eligible and ranked high for the 2011 NFL Draft. See *2011 NFL Draft – Prospects by College: North Carolina*, ESPN.COM, http://insider.espn.go.com/nfl/draft/schools/_/id/2327/north-carolina (last visited Mar. 7, 2011).

¹⁸⁰ NFL Player X, *Agent Payouts? No Big Deal*, PLAYER X BLOG (Oct. 15, 2010, 11:46 AM), http://insider.espn.go.com/insider/blog?name=player_x&id=5687781.

¹⁸¹ NFL CBA, *supra* note 1.

¹⁸² Adam Schefter, *Sources: Deal to End Lockout Reached*, ESPN.COM, http://espn.go.com/nfl/story/_/id/6797238/2011-nfl-lockout-owners-players-come-deal-all-points-sources-say (last updated July 25, 2011).

¹⁸³ See *Lockout Central Fact Sheets*, NFLPLAYERS.COM, <http://www.nflplayers.com/about-us/2011-Lockout-Central/Fact-Sheets/> (last visited Mar. 7, 2011).

funds from a student-athlete who accepted payments but did not end up signing with the agent.¹⁸⁴ Luchs claims, that after paying the players, the agents could sue a player to recover the payments if that player ended up using another agent.¹⁸⁵ While this may have been the case, it is extremely unlikely that a court would enforce an agent's right to recover funds he paid a student-athlete, in violation of NCAA rules. Courts would likely find that upholding NCAA standards is in the public interest and would therefore not permit an agent to recover his funds under either an unclean hands, illegality, or public policy exception to enforcing the agreement.¹⁸⁶ While the agents may not have been able to recover their payments in court, the fact that the NFLPA permitted them to try, shows that the NFLPA does not have a track record of taking unethical agent issues seriously.

The NFLPA's handling of two publicized agent scandals also calls into question the organization's commitment to harsh punishments for agents who violate the NFLPA RGCA. Following the scandal involving NFLPA sanctioned agent Gary Wichard, the NFLPA suspended Wichard for nine months.¹⁸⁷ While this discipline may seem like the NFLPA is taking the issue seriously, when compared to how the NFLPA sanctioned agent Teague Egan, it shows that the NFLPA is really not taking the issue seriously. Egan created a scandal when he gave a University of Southern California ("USC") football player a ride across campus in a golf cart, in violation of NCAA rules.¹⁸⁸ The NFLPA revoked Egan's agent certification as a result of the scandal stating Egan "is not fit to be a certified contract advisor."¹⁸⁹ Even though the NCAA determined that players linked to Wichard received roughly \$23,500 in benefits,¹⁹⁰ the NFLPA only suspended Wichard for nine months. The only logical conclusion is that the NFLPA considers a ride on a golf cart to be a more serious violation than providing \$23,500 in benefits.

It is possible that the unequal sanctioning of the two agents is due to the fact that the NFPLA only found Wichard had "impermissible communication," while Egan was found to have provided a benefit.¹⁹¹ However, it is more likely that the sanctions had to do with the stature of the agent within the NFL community. Eagan was an undergradu-

¹⁸⁴ Dohrmann, *supra* note 9.

¹⁸⁵ *Id.*

¹⁸⁶ See *Walters v. Fullwood*, 675 F. Supp. 155, 160-61 (S.D.N.Y. 1987).

¹⁸⁷ *Gary Wichard Suspended 9 Months*, *supra* note 126.

¹⁸⁸ See Moura, *supra* note 38.

¹⁸⁹ *Gary Wichard Suspended 9 Months*, *supra* note 126.

¹⁹⁰ See *Agent Scandal Costs UNC Three Players*, ESPN.COM, <http://sports.espn.go.com/nfl/news/story?id=5673405> (last updated Oct. 11, 2010).

¹⁹¹ See *Gary Wichard Suspended 9 Months*, *supra* note 126.

ate student at USC, and although certified by the NFLPA, he had no clients.¹⁹² Wichard, on the other hand, has been an agent since 1980.¹⁹³ He has an extensive client list, which includes star players such as Dwight Freeney, Jason Taylor, Terrell Suggs, and Antonio Cromartie.¹⁹⁴ He has negotiated three record-breaking NFL contracts for his clients.¹⁹⁵ In the 2010 NFL Draft alone, Wichard had five players that he represented who were drafted,¹⁹⁶ including a first-round pick (Spiller)¹⁹⁷ and three second-round picks (Clause, Mays, and Benn).¹⁹⁸ Given Wichard's prominent client list, it is far more likely that the NFLPA preferred a slap on the wrist for Wichard since revoking his license would leave a number of players without an agent. The NFLPA may be able to justify the seemingly light discipline if it chooses to only accept that Wichard had improper contact with a student-athlete. However, should the pending state investigation convict Wichard of a violation of the UAAA, the NFLPA would likely have no choice but to revoke Wichard's license.¹⁹⁹

While the NFLPA has claimed to have an interest in sanctioning agents who violate the NFLPA RGCA, their unwillingness to also assess penalties to players leaves their commitment to the issue still unknown.

The NFLPA is opposed to any penalty being imposed upon a player in the NFL for conduct relating to the receipt of benefits in violation of NCAA rules while the player was in college. However, [the NFLPA] will continue to discuss with the NCAA .

¹⁹² Moura, *supra* note 38.

¹⁹³ *Gary Wichard Suspended 9 Months*, *supra* note 126.

¹⁹⁴ See *Client List*, PRO TECT MANAGEMENT, <http://www.nothinbutfreaks.com/clientlist> (last visited Mar. 7, 2011).

¹⁹⁵ See *News*, PRO TECT MANAGEMENT, <http://www.nothinbutfreaks.com/news-archives> (last visited Mar. 7, 2011).

¹⁹⁶ *NFL Live: Nothin' But Freaks* (ESPN television broadcast Feb. 15, 2010), available at <http://www.nothinbutfreaks.com/videos/214101>. These players were Jimmy Clausen, C.J. Spiller, Taylor Mays, Everson Griffen, and Arrelious Benn.

¹⁹⁷ *2010 NFL Draft Pick List and Results – Round 1*, ESPN.COM, http://insider.espn.go.com/nfl/draft/rounds/_/year/2010 (last visited Mar. 7, 2011).

¹⁹⁸ *2010 NFL Draft Pick List and Results – Round 2*, ESPN.com, http://insider.espn.go.com/nfl/draft/rounds/_/round/2/year/2010 (last visited Mar. 7, 2011).

¹⁹⁹ See NFLPA RGCA, *supra* note 13, at 9, 17. The NFLPA RGCA do not have any mandatory discipline requirements. See *id.* at 17. However, if a ride on a golf cart warranted revoking Egan's license, then a criminal conviction should merit having Wichard's license revoked as well.

. . . issues relating to the conduct of agents certified by the NFLPA as they interact with NCAA players.²⁰⁰

This is a logical position for the NFLPA to take as it would not be popular or very fair to sanction individuals for actions before they became members of the union. However, the NFLPA does have a duty to make sure that agents representing their players are ethical.²⁰¹ This puts the NFLPA in a difficult situation. They would likely anger their members if they allowed players to be sanctioned for actions prior to membership with the NFLPA. However, enforcing rules against agents may harm their members as it would make the members' unethical activity public. While the NFLPA may never take the drastic step of allowing their members to face repercussions for unethical acts prior to membership, they do have the duty to sanction the unethical agents. However, it seems that, in reality, they are unwilling to sanction anyone.

IV. POTENTIAL SOLUTIONS

While there is a great deal of focus on how bad the situation has become, there are also several ways in which unethical agent activity can be eliminated.

A. The Media's Role

The media may play the largest role in forcing the various agencies to work together to make some kind of change to the landscape where unethical agents are the norm instead of the exception. As more and more news outlets continue to report on the high level of unscrupulous activity in the NCAA, it may cause the states with agent regulation and the FTC to begin enforcing the laws by following up with investigations based on media reports.²⁰² It may also cause states without legislation to consider adopting the UAAA based on the fact

²⁰⁰ Joe Schad, *NCAA: No Suspensions for NFL Rookies*, ESPN.COM, <http://sports.espn.go.com/nfl/news/story?id=5733652> (last updated Oct. 27, 2010) (quoting an NFLPA statement).

²⁰¹ See NFLPA RGCA, *supra* note 13, at 17.

²⁰² The investigation of Wichard in North Carolina is a clear example of this. See *Attorney: NC Investigators Interview Gary Wichard*, USATODAY.COM, http://www.usatoday.com/sports/college/football/acc/2010-10-05-wichard-blake-nfl-relationship_N.htm?csp=34sports (last updated Oct. 5, 2010). As a result of the increased media attention, Oregon has plans to change its legislation in order to more effectively prosecute unscrupulous agents. See *Oregon Legislation Would Crack Down on Sports Agents' Influence on College Athletes*, OREGONLIVE.COM (Oct. 13, 2010), http://www.oregonlive.com/collegefootball/index.ssf/2010/10/oregon_legislation_would_crack.html.

that not having the legislation may look bad considering the amount of news coverage this topic has received. Lastly, it may cause schools to feel more comfortable bringing civil suits against agents or former players.

If more agents were found guilty in court, it would likely force the NFLPA to act even if the players do not really care whether or not the agents are giving players benefits in college. Even if the NFLPA were to eliminate the prohibitions of agents soliciting clients through gifts²⁰³ or pursuing clients who are not yet eligible for the draft,²⁰⁴ it would likely never eliminate the requirement that all NFL contract advisors must “fully comply with all state and federal laws.”²⁰⁵ Even if the RGCA allowed any and all contact by agents with college athletes, the fact that these actions would violate state or federal law would force the NFLPA to suspend or revoke the agent’s license, unless the NFLPA wanted to eliminate the requirement that their contract advisors not have a criminal record. Under this potential solution, the media’s continued reporting of the issue may trigger the more zealous enforcement of the laws, which in turn, would force the NFLPA to suspend agents, regardless if the players are not concerned with the issue.

While the media has helped bring to light the major issues involving agents paying college athletes, it has also painted a picture of the NCAA in a negative light. The public appeared to be on the side of the NCAA in the early part of the 2010-2011 football season when reports of unscrupulous agents were prevalent.²⁰⁶ However, by the end of the season, hot button news stories shifted from unscrupulous agents to unscrupulous players. The Cam Newton and Ohio State stories overshadowed the agent issues by the season’s end. Much of the media attention following these stories focused on how the NCAA handled the discipline in these scandals, as opposed to focusing on the players, their family members, and the rules they broke.²⁰⁷

Since the purpose of SPARTA and the UAAA is the protection of the NCAA’s rules as well as the schools and athletes, it is essential that the NCAA remains an institution that is viewed as worthy of protection. When the Oregon State Legislature indicated its willingness

²⁰³ NFLPA RGCA, *supra* note 13, at 8.

²⁰⁴ *Id.* at 11.

²⁰⁵ *Id.* at 7.

²⁰⁶ See Joe Schad, *Financial Penalties for Players Possible*, ESPN.COM, <http://sports.espn.go.com/ncf/news/story?id=5725836> (last updated Oct. 26, 2010).

²⁰⁷ See *College Football Live: Mark May Blasts the NCAA* (ESPN television broadcast Dec. 23, 2010), available at <http://search.espn.go.com/mark-may-blasts/>; *The Sports Reporters: Parting Shot: NCAA Hypocrisy* (ESPN television broadcast Dec. 26, 2010), available at <http://search.espn.go.com/ncaa-hypocrisy/>; Wojciechowski, *supra* note 127.

to curb unethical agent activity, it was at the height of the media coverage of the issue.²⁰⁸ While a commitment from states to enforce these laws is a major step towards seeing an actual change in unethical agent activity, what appears to be a constant change in the media's portrayal of the NCAA may prevent the required follow-through due to a lack of public support.

B. Minor League Football

The NFL is the only professional sports league in the U.S. in which players have no option other than college where they can showcase their skills for a potential spot on a professional roster. Major League Baseball ("MLB"), the National Basketball Association ("NBA") and the National Hockey League each have expansive minor leagues where players can be compensated for playing and have the opportunity to audition for the top-level teams.²⁰⁹ Aside from the NBA's minor league, players hoping for a career in the NBA, as witnessed by the success of players like Brandon Jennings, have the option of playing in the professional leagues in Europe before entering the NBA draft.²¹⁰ The NBA also only requires players to wait one year after graduating high school before entering the NBA, and there is a distinct possibility that this rule will be short lived as the players are fighting to eliminate the rule completely.²¹¹

While these sports are by no means clean of unscrupulous agents paying players, there is not a consistent barrage of news relating to agents paying college hockey, baseball, and basketball players (basketball receives the most attention, but it does not compare to the level of football). A potential reason for this is the fact that players who wish to get paid immediately have some legitimate option in which they can showcase their talents to professional teams while re-

²⁰⁸ See *Oregon Legislation Would Crack Down on Sports Agents' Influence on College Athletes*, *supra* note 202.

²⁰⁹ See *Official Info*, MiLB.COM, <http://web.minorleaguebaseball.com/milb/info/affiliations.jsp> (last visited Mar. 7, 2011); *NBA D-League Announces NBA Affiliates for 2010-11 Season*, NBA.COM (July 6, 2010), http://www.nba.com/dleague/news/affiliates_2010.html; *National Hockey League Minor League Affiliations*, <http://www.dickestel.com/hockeyaffil.htm> (last updated Feb. 15, 2011).

²¹⁰ See Pete Thamel, *At 19, Plotting New Path to N.B.A. via Europe*, NYTIMES.COM (Oct. 4, 2008), http://www.nytimes.com/2008/10/05/sports/basketball/05jennings.html?_r=1.

²¹¹ See NBA COLLECTIVE BARGAINING AGREEMENT ARTICLE X, *available at* <http://www.nbpa.org/sites/default/files/ARTICLE%20X.pdf>; Chris Broussard, *Players Seek End of Age Restriction*, ESPN.COM, <http://sports.espn.go.com/nba/news/story?id=5899152> (last updated Dec. 9, 2010).

ceiving some compensation for their work.²¹² A legitimate minor league football league under the NFL would give players who wish to be paid an option other than college football in which to impress NFL teams and allow the true student-athletes to compete as amateurs at the college level. This plan would likely take time given the popularity and exposure that an athlete can receive while playing in college. However, if players were successful in the NFL after spending time playing minor league football, it would likely serve as a viable alternative to the athlete who wishes to be paid immediately after leaving high school.

The NFL should follow the lead of the MLB. No matter how high profile a player is, or whether the player is entering a professional career directly from high school or after a career in college athletics, there never seems to be any controversy of agents paying baseball players in exchange for the player signing on to be represented by the agent. While it is possible this is due to the fact that college football is far more popular than college baseball,²¹³ it is more likely the result of the growth of Minor League Baseball.

Minor League Baseball is an affiliate of MLB.²¹⁴ It consists of nineteen leagues ranging in classification from rookie (lowest level) to Triple-A (highest level).²¹⁵ Each team associated with the various Minor League Baseball leagues is affiliated with an MLB team.²¹⁶ The affiliation with a MLB team makes the choice to play in the Minor Leagues a viable alternative to college baseball for players who would like to receive compensation for playing as well as showcase their talents to MLB teams. The fact that Minor League teams are affiliated with MLB teams also benefits MLB as they can directly monitor and train the athletes who will one day play for them as opposed to relying on the training from college coaches who may differ in philosophy from them.

The success of Minor League Baseball²¹⁷ indicates that a successful minor league football system is not unrealistic. The NFL could

²¹² While there are other professional football leagues such as the Canadian Football League and the United Football League, these leagues have never been viewed as legitimate alternatives to college football as a means of auditioning for an NFL roster.

²¹³ See *Football Expands Lead Over Baseball as America's Favorite Sport*, *supra* note 24. College football was ranked as the third most popular sport in America while college baseball did not make the list. *Id.*

²¹⁴ *Affiliates*, MLB.COM, <http://mlb.mlb.com/index.jsp> (last visited Mar. 7, 2011).

²¹⁵ *Standings*, MiLB.COM, <http://web.minorleaguebaseball.com/milb/standings/> (last visited Mar. 7, 2011).

²¹⁶ *Official Info*, MiLB.COM, <http://web.minorleaguebaseball.com/milb/info/affiliations.jsp> (last visited Mar. 7, 2011).

²¹⁷ Attendance for Minor League games has gone up in twenty-four of the last twenty-nine seasons and reached a record high in total attendance in 2008 with forty-three million tickets

even implement a minor league system without eliminating its requirement that all NFL players be three years removed from high school. The league could allow players to go directly from high school to the minor leagues but still force them to wait three years before becoming eligible for an NFL roster.

The primary selling point to those players who have no interest in competing at the amateur level would be that the minor league teams would be affiliated with NFL clubs.²¹⁸ This would allow those players who only wish to play professional football to have the chance to prove themselves directly to an NFL franchise and potentially weed out all the players from college football who would be susceptible to unscrupulous agents. While there would be potential benefits to the NFL and to players who wish be paid immediately, unfortunately, there is no real incentive for the NFL to invest in a minor league system. They essentially have a risk-free minor league in the NCAA, and it is unlikely the NFL would risk a failed minor league if they do not need to.

While a large-scale minor league system is not likely to take shape anytime in the near future, if the NCAA and the NFL have aspirations of maintaining true amateur football, then they should welcome the idea. NFL franchises would have the ability to train and scout players before committing them to NFL rosters, and the NCAA would likely rid itself of the players most likely to tarnish its image of a true amateur athletics association.

C. NFLPA General Counsel for Contract Negotiation

Although realistically, this is most unlikely to occur, the most effective way to cure the problem of agents paying college players would be to eliminate the competition for players. Much like the NFLPA hires a general counsel for all legal issues,²¹⁹ the NFLPA could hire a team of contract advisors to assist players in contract negotiations with teams. Agents would be paid a salary and would therefore eliminate the competition to represent the most high-profile athletes. This system could immediately eliminate the need for agents to pay college athletes as the agents would be NFLPA employees and

sold that year. *The History & Function of Minor League Baseball*, MLB.COM, http://web.minorleaguebaseball.com/milb/history/general_history.jsp (last visited Mar. 7, 2011).

²¹⁸ This would be a major distinguishing factor from other football leagues such as the Arena Football League. See NFL CBA, *supra* note 1, at 129.

²¹⁹ See *Department Contacts*, NFLPA.ORG, <http://www.nflplayers.com/about-us/Department--Contacts/> (last visited Mar. 7, 2011).

would not have to compete for the highest commission as they would be paid salary.

The only incentive that an agent has in paying a collegiate athlete is the potential that the payments will lead to the player allowing the agent to represent the player in contract negotiations. With thirty-two current NFL teams allowed to have up to a fifty-three man roster, the maximum number of NFL players at any given time is only 1696.²²⁰ With such a limited number of potential clients there is clearly a great deal of competition for the valuable commodity of negotiating a player's next contract. Additionally, each year there are roughly 224 collegiate athletes drafted by NFL teams.²²¹ For a person trying to become an agent, this indicates the maximum number of potential clients who are guaranteed to not already have representation. With such a small pool of potential clients and the lack of enforcement of regulations, it is no wonder that agents bend the rules by paying players. The hope is that these illegal payments may give them the edge when it comes time to sign the players as new clients. Eliminating this extremely competitive aspect of the agent's business would eliminate agent's incentive to pay players.

While this solution would produce the most immediate results, it is by far the least likely to occur. The players would likely not be in favor of this solution as they would probably much rather have an agent motivated by higher commission representing them in negotiations with teams over their salaries. Even if the NFLPA-governed agents were held to the strictest of fiduciary duties, it is still unlikely that the players would prefer this method over the current system of agents receiving a three-percent commission on contract negotiations. While this solution would be the most effective, it is unlikely to ever take shape as the players would likely not be in favor of this proposal at all.

IV. CONCLUSION

While at the moment, agents appear free to violate NCAA rules, the federal law in SPARTA, the state laws for the states that have enacted the UAAA and the NFLPA RGCA without fear of repercussion, there may be hope for the future. The NCAA faces the obstacles of continuing to maintain itself as a true amateur league while also battling the often-unfair negative perception that it is hypocritical

²²⁰ See *Teams*, NFL.COM, <http://www.nfl.com/teams> (last visited Mar. 7, 2011); NFL CBA, *supra* note 1, at 145.

²²¹ See NFL CBA, *supra* note 1, at 17. The NFL Draft consists of seven rounds with each team receiving one pick in every round. *Id.*

in calling itself an amateur league. Even with the negative perception that the NCAA sometimes receives, it still seems to maintain public support when it comes to enforcing rules against agents paying college athletes.

Public support is likely the key to ensuring the enforcement of the NCAA rules on amateur athletics. Whether this comes in the form of actual enforcement of laws, the NFLPA hoping to curb negative publicity by stripping unscrupulous agents of their licenses, or some new policy such as an NFLPA take-over of contract negotiations or minor league football, it seems that public support of the NCAA is the key to ensuring that the NCAA's standards are enforced.

While an immediate change in the landscape of the NCAA is unlikely, the fact that there are now state and federal laws to make agents who pay college athletes not only unethical but criminal, and heavy media coverage of the issue shows that change is likely. Enforcement of the laws will force not only the NFLPA, but also other leagues with unethical agents to suspend or revoke those agents' licenses and hopefully allow for amateur athletics without the cloud of under-the-table payments from agents.